

REQUEST FOR**ACTION BY:****TOWN OF CLARENCE, N.Y.**

- ☒ Appeal Board
☐ Planning Board
☐ Town Board

- ☒ Appeal
☐ Rezone
☐ Revise Ordinance
☐ Subdivision
☐ Limited Use Permit
☐ Other

Rec'd. by: James Callahan

Date November 25, 2013

Action Desired Applicant requests an area variance for the construction of a three story multiple family residential development located within the Restricted Business Zone.

Proposed development located within 4520 Ransom Road, and the overall Brothers of Mercy Campus.

Reason

Town Code Reference:

§229-126(D) (1) (e)

Adopted on June 26, 2013

PLEASE PRINT

- limits multiple family

in Restricted Business

Zone to 2 story maximum

Name Regent Development, Inc

Address c/o Sean Hopkins, Esq

5500 Main Street, Suite 100

Town/City Williamsville **State** NY **Zip** 14221

Phone Williamsville NY 14221

Signed SIGNATURE ON FILE

Requests for action on zoning should be filled out completely in above spaces if practicable; otherwise give brief description and refer to attached papers. The complete request with all necessary plans, maps, signatures, should be filed with the Secretary of the Planning Board. Requests (except appeals) may be filed with the Town Clerk or Town Board, but will generally be referred to Planning Board with subsequent loss of time.

Initial Action

Approved ☐

Rejected ☐ by on 19

Approved ☐

Rejected ☐ by on 19

Published (Attach Clipping) on 19

Hearing Held by on 19

Final Action Taken

Approved ☐

Rejected ☐ by on 19

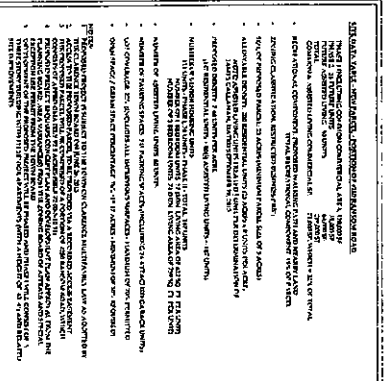
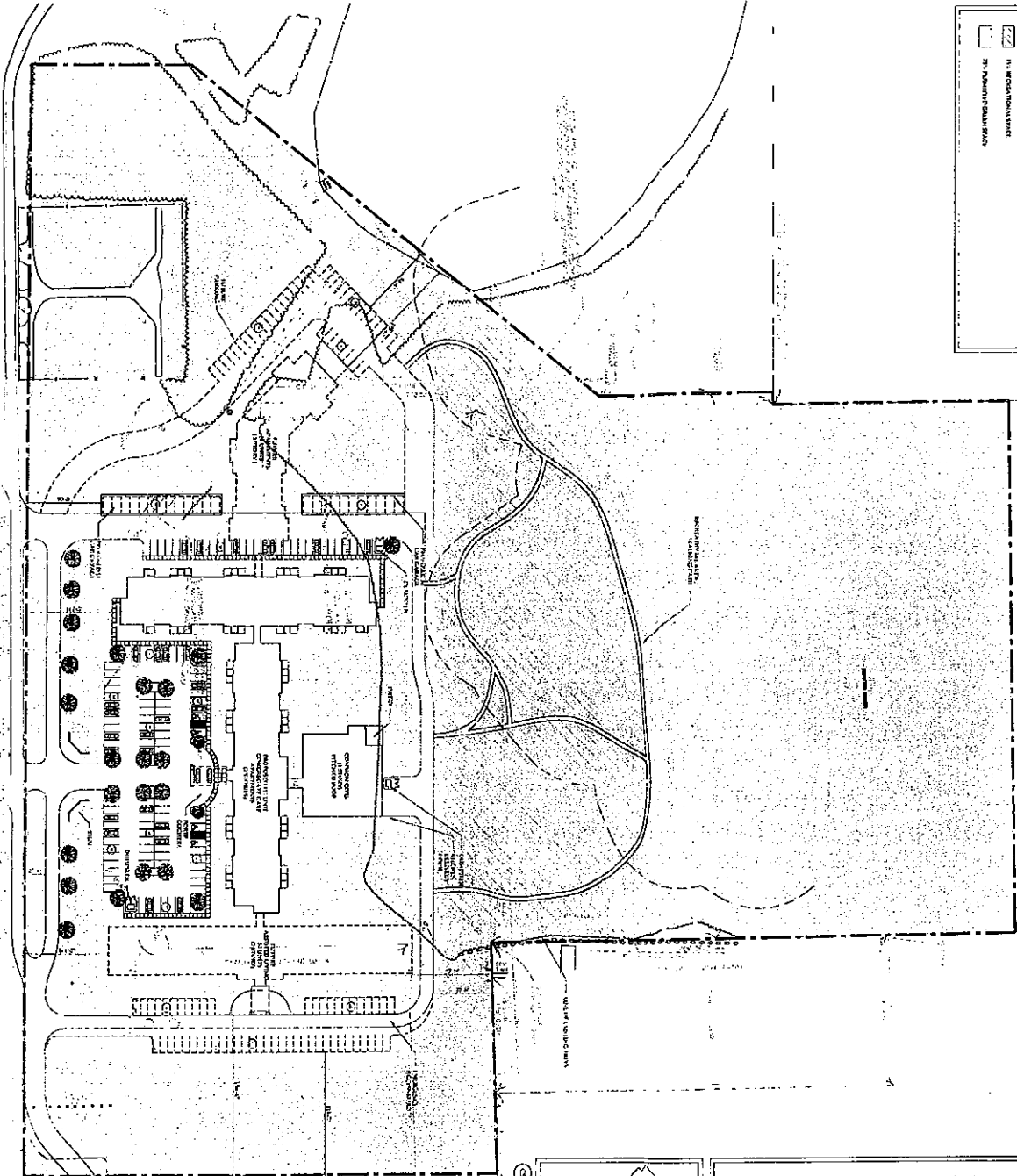
Published (Attach Clipping) on 19

Filed with Town Clerk on 19

Filed with County Clerk on 19



DRAWING #: A-201



DRAWING: AS-101

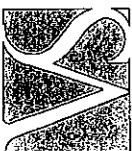
[illegible]

Brother's
of Mercy

4520 Ransom Road,
Clarence

SA PROJECT TEAM: PERSONAL EXPERIENCE
 NPO ABOI PROJECT
 INTERVIEW DATE TIME
 SEAL:

MASTER PLAN



SILVESTRI
ARCHITECTS - PC

2011 RELEASE UNDER E.O. 14176
 2011 RELEASE UNDER E.O. 14176

SAICB #:	DATE:
12142	11-11-13

DRAWING NO. AS-102

**Zoning Law Amendment
Adopted June 26, 2013**

Remove the following:

Section 229-93. Uses Permitted with a Special Exception Use Permit in the Major Arterial Zone.
(A)(2). Multiple Family Dwellings.

The following section replaces the current and existing Section 229-126. Multifamily developments:

Section 229-126. Multiple Family Residential Developments.

Multiple Family Residential Developments will only be allowed in the Commercial, Restricted Business and Traditional Neighborhood Districts as described herein.

A. The purpose of the Multiple Family Residential Housing Special Exception Use Permit is to guide future development of multiple family housing developments within the Town of Clarence. Higher density housing in the form of multiple family housing shall not be considered an "as of right" use within any zoning classification.

B. The Town Board shall determine the placement of such Multiple Family Residential Housing based upon its design features, its impact upon the community character and its fiscal impact upon the Town.

C. The intent of this Section is to provide design standards to ensure that multiple family residential developments are properly integrated into the character of the Town by providing for:

1. Preservation of valuable commercial property within the Town for development of commercial uses.
2. Preservation of Open Space.
3. Higher density residential development that is in harmony with the rural and suburban character and scenic qualities of the Town of Clarence.
4. Facilitation of interconnectivity between commercial uses and between multiple family and other residential uses, where appropriate.
5. Facilitation of adequate extensions of streets, walkways and utilities.

D. Multiple Family Residential Uses in the Commercial and Restricted Business Zones.

1. In order to preserve the long term viability of the Commercial and Restricted Business zoning classifications for commercial uses and to provide a balance to the developing residential growth in the community and to avoid the concentration of multiple family residential units in a particular area of the Town, the maximum number of multiple family residential units that can be approved on any parent parcel or that can be approved in a single project design approval shall be restricted as follows:

- a. Multiple Family Housing will only be allowed on properties within sewer districts as approved by the Town Board.
 - b. Multiple Family Housing will only be allowed on properties that contain a minimum of 5 acres.
 - c. The maximum density for multiple family uses shall be 8 units per acre.
 - d. A minimum of 25% of the property shall be committed to commercial uses that are allowed within the Commercial and Restricted Business Zones, and inner connectivity with other residential and commercial uses where possible is encouraged.
 - e. Multiple Family Housing shall be limited to a maximum of 2 stories for any building within such a project.
 - f. Multiple Family Housing shall have a setback from the affronting roadway to preserve the open character of the Town. The required front yard setback area shall be enhanced with landscaping to ensure an adequate visual buffer.
 - g. Scale and design must be compatible with community features and all other standards, as identified for Commercial or Restricted Business districts in Sections 229-83 through 229-90.2 and Sections 229-75 through 229-82.2 of this Chapter.
- 2. Multiple family developments in a Commercial or Restricted Business Zoning District will require 30% of the project site to be preserved as permanent green space.
 - 3. Part or all of the required commercial component can be reserved as green space for later commercial development; this reserved green space for commercial use is in addition to the required overall project site green/open space as per lot coverage calculations.
 - 4. Upon recommendation of the Planning Board, the Town Board will designate the area of the property that is to be reserved as green space at the time of Concept Plan Approval.
- E. Multiple Family Residential Uses in the Traditional Neighborhood District (TND).
- 1. The maximum number of units within a Multiple Family Residential project within the TND shall be limited to 16 units.
 - 2. The maximum density of Multiple Family Residential units within a project shall be limited to 8 units per acre.
 - 3. Projects that involve only the development of Multiple Family Residential units, with no mixed use component, shall require a two (2) acre minimum lot size.
 - 4. Mixed use projects on smaller lots will be allowed with a maximum residential density of 8 units per acre and with a minimum 25% commercial component.

5. Scale and design standards must be compatible with community features and all other standards, as identified within the TND Zoning District (Sections 229-57 through 229-68 of this Chapter).

F. Exceptions.

1. Under special circumstances, the Town Board, upon recommendation of the Planning Board, may allow multiple family uses on unsewered lots of less than 5 acres within the Commercial and Restricted Business Zones. These circumstances include:

a. The maximum lot coverage of a multiple family project shall be 70% of the parcel.

b. A minimum of 50% commercial use of the developable land shall be required (35% of the total lot).

c. The maximum on-site waste treatment allowance determination shall be consistent with regulatory agency and Town Engineer approvals, including residential and projected commercial waste. The maximum number of units that can be developed on an unsewered lot in the Commercial Zone shall be 4 units per acre in a mixed use format with a maximum total number of multiple family residential units capped at 16 units.

G. General Design Standards

1. All on-site traffic access roads shall be constructed to standards as approved by the Town Board. Curb cuts for proposed entrances or exits shall not be closer than 100 feet to any existing road intersection (70' within a TND).

2. Each phase of any multiple family residential development must meet the density requirements as herein established.

3. Multiple family residential projects that adjoin a street shall have significant screening running the length of the right-of-way, parallel to the street, except for driveways.

4. All multiple family residential projects shall have an area or areas devoted to the recreational use of the residents. Such recreational component can be comprised of open space and shall have a total area equal to at least 15% of the gross land area of the lot. This area shall be fully maintained by the owner of the property. Part or all of such space shall be in the form of developed recreation areas to be usable for recreational purposes. The 15% dedicated for such use may be counted as a part of the total green space requirement for such projects.

5. No principal building shall contain less than 1,000 square feet of usable floor space. Buildings used in whole or part for residential purposes, exclusive of accessory buildings and exclusive of porches, entries, garages and terraces, shall contain no less than 900 square feet of usable living space if a one-story building used as a one-family dwelling, nor less than 600 square feet of usable first floor living space if more than one story and that no such building shall contain less than 600 square feet of

usable living space for each one-bedroom family unit or apartment; 720 square feet of usable living space for each two-bedroom family unit or apartment; and 1,000 square feet of usable living space for each three-bedroom family unit or apartment.

6. Any multiple family housing development that includes five or more units and that is situated, in whole or in part, within the Adequate Educational Facilities Overlay District, shall comply with the terms of Article XIVA of the Town Zoning Law.

**REQUEST FOR
ACTION BY:**

TOWN OF CLARENCE, N.Y.

Area Variance

- ☒ Appeal Board
☐ Planning Board
☐ Town Board

- ☐ Appeal
☐ Rezone
☐ Revise Ordinance
☐ Subdivision
☐ Limited Use Permit
☐ Other

Rec'd. by: _____

Date November 25, 2013

Action Desired The Applicant is seeking an area variance from the Zoning Board of Appeals from Section 229-126D(1)(e) of the Zoning Code to allow proposed buildings on a portion of 4520 Ransom Road to consist of three stories. The property to be developed is part of the Brothers of Mercy Campus. Full size copies of the Concept Plan and Exterior Elevation Plan prepared by Silvestri Architects, PC. are attached.

Reason The granting of the requested relief by the Zoning Board of Appeals is consistent with the statutorily mandated balancing test and five criteria per Town Law Section 267-b(3)(b).

Attached as Exhibit A is a narrative

PLEASE PRINT

providing justification for the
requested relief.

Name <u>Regent Development, Inc</u>		
Address <u>c/o Sean Hopkins, Esq.</u>		
<u>5500 Main Street, Suite 100</u>		
Town/City	State	Zip
<u>Williamsville</u>	<u>NH</u>	<u>14221</u>
Phone _____		
Signed <u>[Signature]</u>		

Requests for action on zoning should be filled out completely in above spaces if practicable, otherwise give brief description and refer to attached papers. The complete request with all necessary plans, maps, signatures, should be filed with the Secretary of the Planning Board. Requests (except appeals) may be filed with the Town Clerk or Town Board, but will generally be referred to Planning Board with subsequent loss of time.

Initial Action

Approved ☐ _____ on _____ 20____
Rejected ☐ by _____ on _____ 20____
Approved ☐ _____ on _____ 20____
Rejected ☐ by _____ on _____ 20____
Published (Attach Clipping) _____ on _____ 20____
Hearing Held by _____ on _____ 20____

Final Action Taken

Approved ☐ _____ on _____ 20____
Rejected ☐ by _____ on _____ 20____
Published (Attach Clipping) _____ on _____ 20____
Filed with Town Clerk _____ on _____ 20____
Filed with County Clerk _____ on _____ 20____

**EXHIBIT A – JUSTIFICATION FOR REQUESTED
AREA VARIANCE PURSUANT TO NYS TOWN
LAW §267-b(3)(b)**

EXHIBIT A

NARRATIVE PROVIDING JUSTIFICATION FOR REQUESTED AREA VARIANCE PURSUANT TO BALANCING TEST AND FIVE CRITERIA CONTAINED IN NYS TOWN LAW §267-b(3)(b)

I. Introduction

This narrative has been prepared on behalf of Brothers of Mercy Inc. and Regent Development, Inc. ("Applicant") in support of its request for an area variance to allow the buildings to be constructed in connection with the proposed expansion of the Brothers of Mercy life care campus to consist of three stories. The Project Site is zoned Restricted Business ("RB") pursuant to the Town's Zoning Map. The Applicant is seeking an area variance since Section 229-126D(1)(e) of the Zoning Code states that multiple family housing buildings on property zoned RB are limited to a maximum of two stories.

The Brothers of Mercy Campus in Clarence, New York is an integrated provider of adult residences, health care and rehabilitation services. They began providing care in Western New York in 1924 and have been providing care in Clarence for over 60 years. The approximately 120 acre campus currently includes 100 active senior apartments, 70 assisted living (adult care) residences and a 240-bed skilled nursing/rehabilitation facility. There are approximately 500 employees that work on the Brothers of Mercy campus.

The proposed project consists of an expansion of the Brothers of Mercy life care campus consisting of approximately twenty five acres of the exiting parcel at 4520 Ransom Road. This parcel has a tax identification number of 72.00-3-10.11 are currently consists of 92.52 acres. The layout of the proposed project is depicted on the full size Concept Plan prepared by Silvestri Architects, P.C. attached to this Variance Application and consists of the following components:

- Phase I: Three story building for 111 senior housing units. A full size Exterior Elevation for the Phase I building prepared by Silvestri Architects, P.C. is attached to this Variance Application.
- Future Phases: 36 additional senior housing units and an 80 bed assisted living facility.¹

The proposed independent senior apartment building and the future assisted living facility will consist of three story buildings, and this triggers the need for an area variance from the Zoning Board of Appeals. The proposed independent senior apartment building will provide every day services to the tenants such as a restaurant, a movie theatre, shopping for sundries and personal care products, laundry and cleaning services, rehabilitation services, physician access, activity center, grill room, and a chapel/assembly room.²

The buildings have been designed so that all of the senior apartments will use interior corridors to allow residents to have year round access to all services without going outside. The three-story vertical structure orientation will enable residents to walk less to use the facilities by reducing horizontal travel distances and instead utilizing elevators. The building will be fully sprinkled and ADA compliant with 24-hour availability to management.

¹ The description of the future phases represents the maximum development for future phases. For example, it is possible that the future assisted living facility will have less than 80 beds. The total proposed project density is 7.48 units per acre and complies with the maximum allowable density for multiple family housing on property zoned Restricted Business per Section 229-126D(1)(c) of the Zoning Code which allows a density of 8 units per acre.

² The proposed project will be owned by a Brothers of Mercy specifically for the proposed project.

II. Justification for Requested Area Variances Pursuant to the Statutory Mandated Balancing Test and Five Criteria Contained in NYS Town Law §267-b(3)(b)

NYS Town Law §267-b(3)(b) sets forth a statutorily mandated balancing test to be considered by a zoning board of appeals in connection with its review of a request for an area variance. The statutorily mandated balancing test requires a zoning board of appeals to balance the benefits that will be realized against the resulting detriments to the health, safety and welfare of the community.

The granting of the requested area variance to allow three story buildings on the Project Site will result in substantial benefits to the Applicant without any resulting detriments to the health, safety and welfare of the community. The benefits that will be received by the Applicant if the ZBA grants the requested area variance include the following:

1. The Applicant will be able to provide senior housing buildings with smaller footprints than if the project consisted of two story buildings. This is beneficial since it will enable future residents to walk less to use the amenities and facilities by reducing horizontal travel distances and instead utilizing elevators.
2. The Applicant will be able to develop the Project Site in manner that will preserve 78% of the total site area as green space. The green space percentage would be reduced if two story buildings were utilized and this would also increase the amount of the Project Site occupied by impervious surfaces.
3. The Applicant will be able to develop the Project Site in a manner that prevents any buildings or parking areas from being located within the on-site wetlands including the regulated 100 foot adjacent area for the NYSDEC freshwater wetland on the Project Site.

In applying the statutorily mandated balancing test set forth above, NYS Town Law §267-b(3)(b) requires a ZBA to consider the following five criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the requested area variance?

The granting of the requested area variance will not create an undesirable change in the character of the neighborhood or a detriment to nearby properties. The Brothers of Mercy Campus consists of approximately 120 acres and the proposed buildings will not be located close to any existing single family homes and the buildings will be located a considerable distance from both Ransom Road and Bergtold Road. It is also important to mention that there is already a four story building located on the Brothers of Mercy Campus.

2. Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance?

It would not be possible to satisfy the established project objectives if the buildings to be constructed on the Project Site were limited to only two stories since this would not yield an acceptable density. It would also not be feasible for the Applicant to seek and obtain permits from the United States Army Corps of Engineers and the New York State Department of Environmental Conservation to allow substantial impacts to the wetlands located on the Project Site. It is also important to mention that by constructing three stories buildings instead of two story buildings with larger building footprints, the Applicant is able to develop the Project Site in a manner that maximizes the green space percentage.³

³ Per Section 229-126D(2) of the Zoning Code, thirty percent of a project site to be developed as multiple family housing must be preserved as permanent green space. The Applicant is proposing to preserve 78% of the Project Site as green space and the use of three story buildings has allowed the Applicant to propose a project layout with a very high green space percentage.

3. Whether the requested area variance is substantial?

The requested area variances are not substantial given that they are necessary in order for the Project Site to be developed in a manner that will be suitable for the future residents. The fact there is already a four story building located on the Brothers of Mercy Campus and this is an indicator that the requested area variance is not substantial. The reason the magnitude of the variance is relevant is that, generally, the larger the difference the more likely it is that a negative effect would be generated.⁴ Merely because a variance may seem noteworthy on paper does not mean that any "harm" would be generated on the surrounding community, and it is "harm" that is balanced against the interest of the applicant according to the required balancing test. If the requested area variances are properly viewed, it is clear that the requested area variances are not substantial since they will not result in harm to the community.

⁴ See Matter of Human Development Services of Port Chester v. Zoning Board of Appeals of the Village of Port Chester, 110 A.D.2d 135, aff'd, 67 N.Y.2d 702. However, in any particular case, the facts may demonstrate that while a variance may seem noteworthy on paper, no negative effect would be produced and, accordingly, the sought-after variance should be granted. For example, in Matter of Frank v. Schever, 227 A.D.2d 558, 642 N.Y.S.2d 956 (2d Dept. 1996), the parcel was 19,983 square feet. However, the zoning code required a minimum lot size of one acre or 43,560 square feet. The variance at issue was more than 54%. Nevertheless, based on the facts presented, no harm would befall the community and the Court directed the zoning board of appeals to grant the application. The Court took similar action in Matter of Shaughnessy v. Roth, 204 A.D.2d 333, 611 N.Y.S.2d 281 (2d Dept. 1994), where the premises contained 50 feet of frontage and 5,000 square feet of area. The zoning code required 80 feet of frontage and a minimum lot size of 10,000 square feet. Accordingly, the application concerned a 50% reduction in lot area coupled with a second area variance seeking a 62.5% reduction from the required frontage. Nevertheless, based on the facts in the record, the Court directed the respondents to issue the variances. Additionally, in Matter of Sasso v. Osgood, 86 N.Y.2d 374 (1995), the applicant sought area variances for a 60% reduction in lot area and a 50% reduction in lot width. Based on all of the facts presented, the Court of Appeals, our State's highest court, overturned the holding of the appellate court and directed that the requested area variances be granted.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood.

The granting of the requested area variance will not have any adverse effects or impacts on physical or environmental conditions in the neighborhood. The Applicant has previously submitted Part 1 of the Long Environmental Assessment Form to the Town's Planning Board pursuant to the requirements of the State Environmental Quality Review Act ("SEQRA") along with numerous reports and studies demonstrating the proposed project will not result in any potentially significant adverse environmental impacts.

The reports and studies that have been submitted to assist the Town of Clarence in taking the required "hard look" at identified potential adverse environmental impacts in connection with the coordinated environmental review of the proposed project pursuant to SEQRA include the following:

- Wetland Delineation Report prepared by Earth Dimensions dated April 17, 2011;⁵
- Jurisdictional Determination issued by the United States Army Corps of Engineers dated June 18, 2013;⁶
- Correspondence issued by Charles P. Rosenberg, Senior Ecologist of the New York State Department of Environmental Conservation dated July 23, 2013;⁷
- Phase 1 Cultural Resource Investigation Report prepared by Panamerican Consultants, Inc. dated March 2012;

⁵ There is an 8.23 acre wetland on the approximately 23 acre site to be developed and this wetland qualifies as both federal wetlands subject to the jurisdiction of the United States Army Corps of Engineers and a freshwater wetlands subject to the jurisdiction of the New York State Department of Environmental Conservation. Since the 8.23 acre wetland qualifies as a freshwater wetland, the area within 100 feet of the wetland is a regulated Adjacent Area per applicable NYSDEC regulations. The Project Sponsor is not proposing any impacts to the 8.23 acre wetland or the regulated 100 foot Adjacent Area.

⁶ The JD issued by the United States Army Corps of Engineers is valid for a period of 5 years.

⁷ This correspondence states that the New York State Department of Environmental Conservation has verified the boundary of the wetland per the Wetland Delineation Report prepared by Earth Dimensions, Inc. dated April 17, 2011 and will be amending the Freshwater Wetland Map for Erie County to amend the boundary of Wetland CL-5.

- Phase 2 Cultural Resource Investigation Report prepared by Panamerican Consultants, Inc. dated April 2012; and
- No Impact letter issued by Nancy Herter, Scientist, Archaeology, New York State Office of Parks, Recreation and Historic Preservation dated June 4, 2012;⁸

5. Whether the alleged difficulty was self-created?

Town Law §267-b(3)(b) expressly states that the issue of whether an alleged difficulty is self-created cannot be utilized as the sole criteria in determining whether to grant a requested area variance. The Applicant does not believe the alleged difficulty is self-created given the following: 1.) Brothers of Mercy owned the Project Site for decades prior to the Town's adoption of multiple family standards approximately six months ago as set forth in Section 229-126 of the Zoning Code; 2.) The proposed three story buildings will not be located close to any existing single family homes and will not be out of scale with the character of the surrounding vicinity given the size of the overall Brothers of Mercy Campus and the location of the Project Site relative to Ransom Road and Bergtold Road; and 3.) With respect to senior housing and assisted living facilities, smaller building footprints are needed to accommodate the needs for tenants as compared to market rate multifamily projects.

III. Conclusion

The Applicant requests the Zoning Board of Appeals grant the requested area variance to allow three story buildings to be constructed in connection with the proposed expansion of the Brothers of Mercy Campus. It is clear the benefits that will be received

⁸ The letter issued by Nancy Herter provides the Town Board with information to determine the proposed project will not have any potentially significant adverse environmental impacts on cultural or historical resources by stating, "[I]t is OPRHP's opinion that your project will have No Impact upon cultural resources in or eligible for inclusion in the State and National Register of Historic Places."

by Applicant if the requested area variance is granted clearly outweighs any resulting detriments per the statutorily mandated balancing test and as such the granting of the requested area variances is both justified and proper.

REQUEST FOR ACTION BY:

TOWN OF CLARENCE, N.Y.

- ☒ Appeal Board
☐ Planning Board
☐ Town Board

- ☒ Appeal
☐ Rezone
☐ Revise Ordinance
☐ Subdivision
☐ Limited Use Permit
☐ Other

Rec'd. by: Jonathan Bleuer

Date November 27, 2013

Action Desired Applicant requests an area variance of 398 sqft to allow for a 598 sqft detached accessory structure.

The principle structure is located within the Planned Unit Residential Development.

Reason

Town Code Reference:

§229-55 (H)

PLEASE PRINT

Name Dmitry Kaplin

Address 8142 Golden Oak Circle

Clarence, NY 14031

Town/City State Zip

Phone 390-9200

Signed SIGNATURE ON FILE

Requests for action on zoning should be filled out completely in above spaces if practicable, otherwise give brief description and refer to attached papers. The complete request with all necessary plans, maps, signatures, should be filed with the Secretary of the Planning Board. Requests (except appeals) may be filed with the Town Clerk or Town Board, but will generally be referred to Planning Board with subsequent loss of time.

Initial Action

Approved ☐

Rejected ☐ by on 19

Approved ☐

Rejected ☐ by on 19

Published (Attach Clipping) on 19

Hearing Held by on 19

Final Action Taken

Approved ☐

Rejected ☐ by on 19

Published (Attach Clipping) on 19

Filed with Town Clerk on 19

Filed with County Clerk on 19



* note the parcel lines displayed are approximate
8142 Golden Oak Circle

proposed accessory structure

pavilion roof 21' by 21'
roof at grill 8'-4" by 19'
total 598 sqft

**REQUEST FOR
ACTION BY:
TOWN OF CLARENCE, N.Y.**

- ☒ Appeal Board
☐ Planning Board
☐ Town Board

- ☐ Appeal
☐ Rezone
☐ Revise Ordinance
☐ Subdivision
☐ Limited Use Permit
☐ Other

Rec'd. by: _____

Date _____

Action Desired

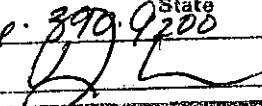
(AREA VARIANCE)
REQUEST FOR VARIANCE OF SQUARE FOOTAGE
OF PROPOSED PAVILLION AND COVERED
ROOF OVER EXTERIOR GRILL AREA.
PAVILLION ROOF: 21'-0" X 21'-0" - 440 SQ. FT.
ROOF AT GRILL: 8'-4" X 19' - 158 SQ. FT.
TOTAL: 598 SQ. FT.

Reason

THE SIZE WAS DESIGNED TO COMFORTABLY ACCOMMODATE ALL
THE ELEMENTS PLANNED TO BE PROTECTED BY A ROOF
WITHOUT ENCLOSURE ON THE SIDES.

PLEASE PRINT

THE STRUCTURE WAS DESIGNED
DETACHED FROM THE HOUSE
TO AVOID BLOCKING NATURAL
DAYLIGHT ON THE NORTH
FACING EXPOSURE.

Name	DMITRY KAPLIN		
Address	8142 GOLDEN OAK CIRCLE		
Town/City	CLARENCE	NY	14031
Phone	716. 390. 9200	State	Zip
Signed			

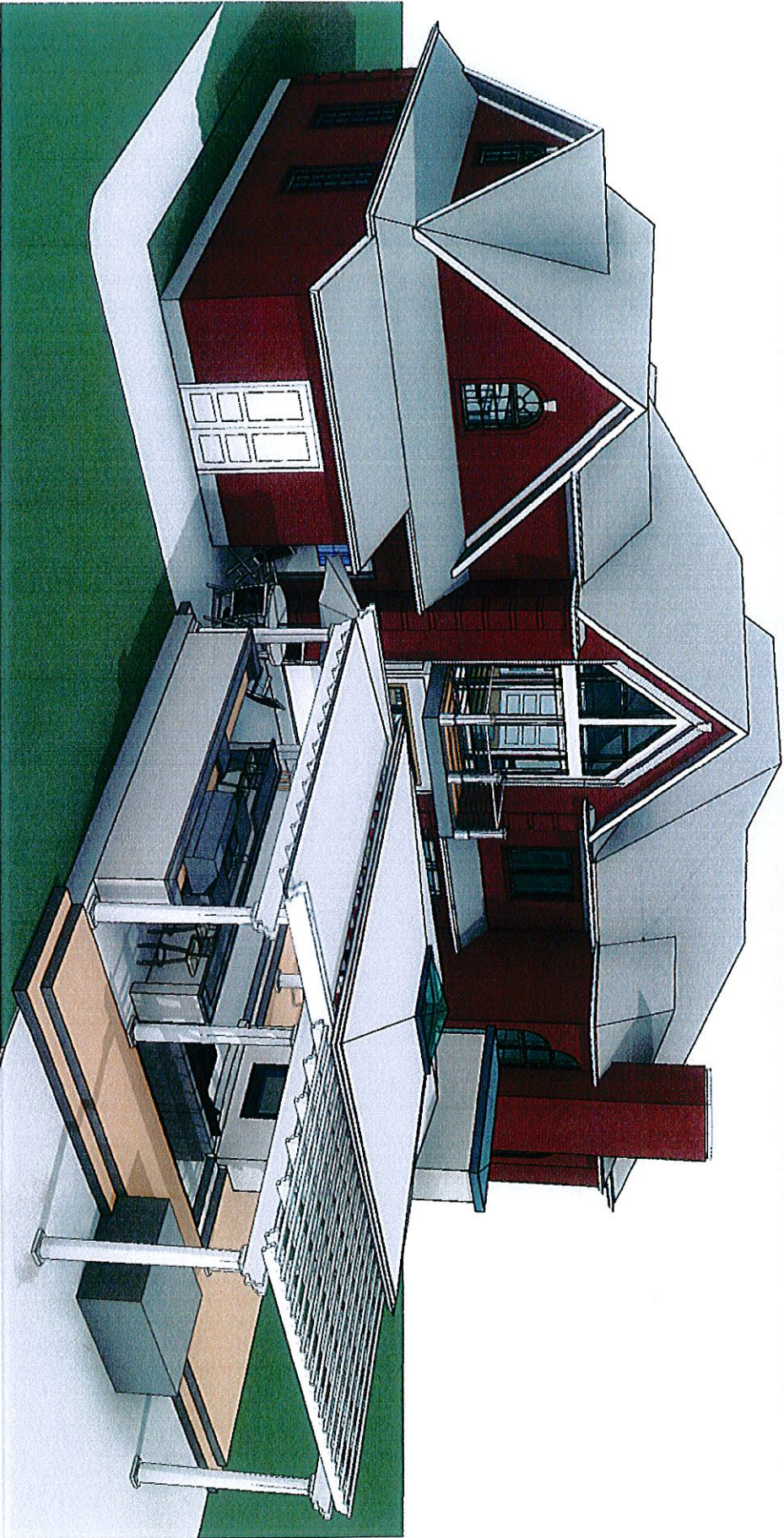
Requests for action on zoning should be filled out completely in above spaces if practicable, otherwise give brief description and refer to attached papers. The complete request with all necessary plans, maps, signatures, should be filed with the Secretary of the Planning Board. Requests (except appeals) may be filed with the Town Clerk or Town Board, but will generally be referred to Planning Board with subsequent loss of time.

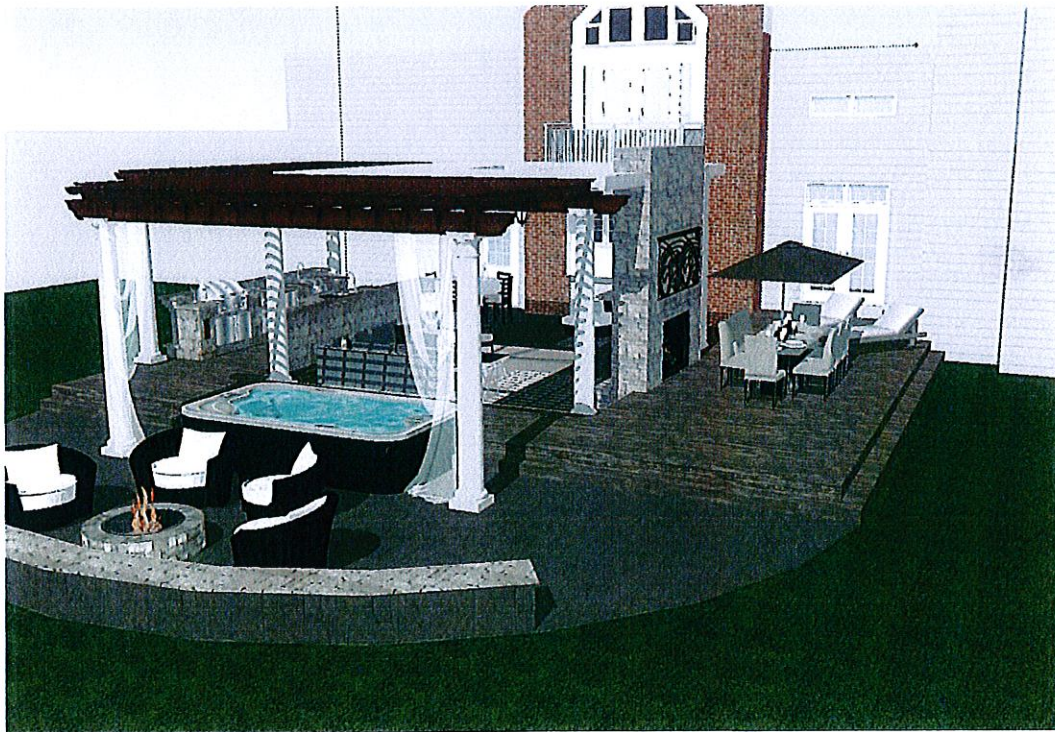
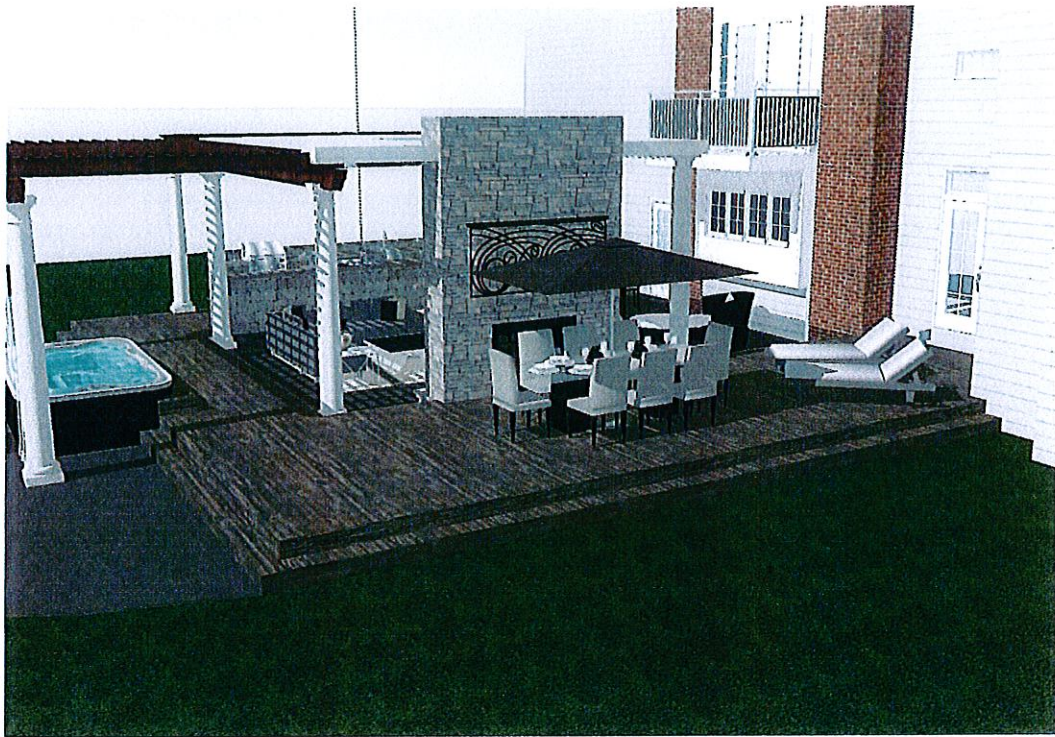
Initial Action

Approved ☐ on 20
Rejected ☐ by
Approved ☐ on 20
Rejected ☐ by
Published (Attach Clipping) on 20
Hearing Held by on 20

Final Action Taken

Approved ☐ on 20
Rejected ☐ by
Published (Attach Clipping) on 20
Filed with Town Clerk on 20
Filed with County Clerk on 20



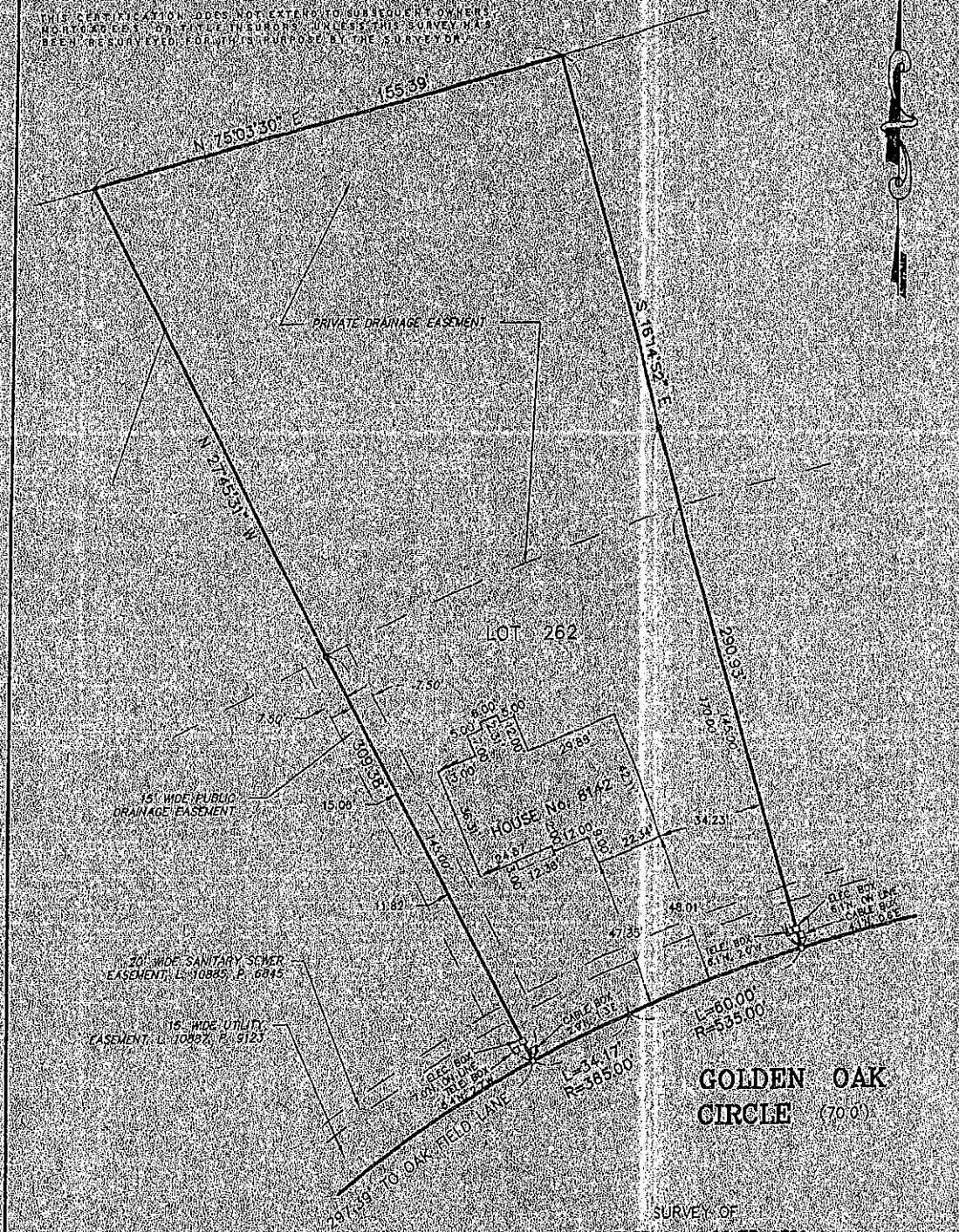


I HEREBY CERTIFY TO
BANK OF AMERICA, C.S.
FIDELITY NATIONAL TITLE INSURANCE COMPANY OF NEW YORK
DMITRY KAPLIN
THAT THIS SURVEY WAS PREPARED IN ACCORDANCE WITH
THE CURRENT CODE OF PRACTICE FOR LAND SURVEYS ADOPTED
BY THE NEW YORK STATE ASSOCIATION OF PROFESSIONAL LAND
SURVEYORS AND AS AMENDED BY THE NIA ALTA FRONTIER LAND
SURVEYORS ASSOCIATION.
THIS CERTIFICATION DOES NOT EXTEND TO SUBSEQUENT OWNERS
NOR DOES IT APPLY TO INSURORS UNLESS THIS SURVEY HAS
BEEN RESURVEYED FOR THIS PURPOSE BY THE SURVEYOR.

NOTE: UNAUTHORIZED ALTERATION OR ADDITION TO THIS
DOCUMENT IS A VIOLATION OF SECTION 2209, PROVISION 2
OF THE NEW YORK STATE EDUCATION LAW.

NOTE: THIS SURVEY WAS PREPARED WITHOUT THE
BENEFIT OF AN ABSTRACT OF TITLE.

0 SET 5/8" REBAR
6 CY 5/8" REBAR



SURVEY OF
SUBLOT 262 COVER 2789
LOCH LEA PHASE 3, PART 1
BEING PART OF LOT 10, SECT 14, TOWNSHIP 12, RANGE 6
HOLLAND LAND SURVEY
TOWN OF CLARENCE, ERIE COUNTY, NEW YORK

Burke & Wells

DATE	REVISION/TITLE
5/3/96	FOUNDATION LOCATION



PRATT & HUTH ASSOCIATES, LLP
ENGINEERING • SURVEYING • PLANNING
40 CASHART DRIVE
WILLIAMSVILLE, NEW YORK 14221
(716) 633-4844 FAX 633-4840

Job No. 01042-262 Date APRIL 18, 1996
Scale 1" = 40' Tax No.

**REQUEST FOR
ACTION BY:**
TOWN OF CLARENCE, N.Y.

☒ Appeal Board
☐ Planning Board
☐ Town Board

☒ Appeal
☐ Rezone
☐ Revise Ordinance
☐ Subdivision
☐ Limited Use Permit
☐ Other

Rec'd. by: Jonathan Bleuer

Date November 27, 2013

Action Desired Applicant requests a variance of .59' to allow for a 12.5' side yard setback at 4905 Kraus Road.

The principle structure is located within the Residential Single Family Zone

Reason Town Code Reference:

§229-52 (B)

PLEASE PRINT

Name	Stephen Development		
Address	c/o Metzger Civil Engineering		
	8560 Main St		
Town/City	State	Zip	
Phone	Williamsville	NY	14221
Signed	SIGNATURE ON FILE 633-2601		

Requests for action on zoning should be filled out completely in above spaces if practicable; otherwise give brief description and refer to attached papers. The complete request with all necessary plans, maps, signatures, should be filed with the Secretary of the Planning Board. Requests (except appeals) may be filed with the Town Clerk or Town Board, but will generally be referred to Planning Board with subsequent loss of time.

Initial Action

Approved ☐
Rejected ☐ by on 19
Approved ☐
Rejected ☐ by on 19

Published (Attach Clipping) on 19

Hearing Held by on 19

Final Action Taken

Approved ☐
Rejected ☐ by on 19

Published (Attach Clipping) on 19

Filed with Town Clerk on 19

Filed with County Clerk on 19

REQUEST FOR ACTION BY:

TOWN OF CLARENCE, N.Y.

- ☒ Appeal Board
☐ Planning Board
☐ Town Board

- ☒ Appeal
☐ Rezone
☐ Revise Ordinance
☐ Subdivision
☐ Limited Use Permit
☐ Other

Rec'd. by: Jonathan Bleuer

Date November 27, 2013

Action Desired Applicant requests a relief from condition applied to area variance on June 14, 2011 relating to 4905 and 4915 Kraus Road.

Lots located within the Residential Single Family Zone

Reason Reference: ZBA minutes of June 14, 2011
old business, appeal no. 1

PLEASE PRINT

Name	Stephen Development		
Address	c/o Metzger Civil Engineering		
	8560 Main St		
Town/City	State	Zip	
Phone	Williamsville	NY	14221
Signed	SIGNATURE ON FILE 633-2601		

Requests for action on zoning should be filled out completely in above spaces if practicable; otherwise give brief description and refer to attached papers. The complete request with all necessary plans, maps, signatures, should be filed with the Secretary of the Planning Board. Requests (except appeals) may be filed with the Town Clerk or Town Board, but will generally be referred to Planning Board with subsequent loss of time.

Initial Action

Approved ☐
Rejected ☐ by on 19
Approved ☐
Rejected ☐ by on 19
Published (Attach Clipping) on 19
Hearing Held by on 19

Final Action Taken

Approved ☐
Rejected ☐ by on 19
Published (Attach Clipping) on 19
Filed with Town Clerk on 19
Filed with County Clerk on 19

METZGER CIVIL ENGINEERING, PLLC

November 27, 2013

James Callahan, Dir. of Community Dev.
Town of Clarence Planning Dept
One Towne Place
Clarence, NY 14031

Re: 4905 and 4915 Kraus Road
Area Variance

Dear Mr. Callahan:

Enclosed please find the following in support of our application for release of condition on Area Variance for the subject property and for the granting of a variance on side yard setback for 4905 Kraus Road:

1. Complete Request for Action Form
2. Property Survey (7 copies)
3. Completed Home Photographs -- 4905 Kraus Road
4. Access Consent Form

As discussed on November 26, 2013, the completed Neighbor Notification Form for 4895 Kraus Road will be delivered on or before the time of the Zoning Board of Appeals meeting on December 10th at 7:00 p.m.

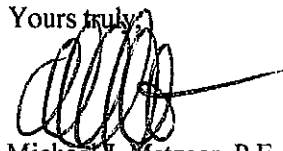
We feel that the Zoning Board of Appeals will find that the concerns over diminished neighborhood character from the construction of a home by factory controlled modular means have been laid to rest by examination of the final product. We feel the home that was constructed on site is consistent with the character of the neighborhood and is an asset to the surrounding community. My client would be happy to arrange a time for the Zoning Board of Appeals or representatives thereof to visit the home inside and out to examine the quality and character of the home. We are proud of what has been constructed here and are more than happy to show it off.

On the second matter, we respectfully request that the Zoning Board of Appeals grant an area variance for side yard setback. An inadvertent and unfortunate stakeout error resulted in the home foundation being constructed slightly askew on the lot, leaving the front southwest house corner 0.59' or 7" closer to the south property line than allowed by code. The rear or southeast house corner is actually slightly further from the south property line than required by the code as a result of the skew.

Mr. Callahan
November 27, 2013
Page 2

Should you have any questions, or wish to arrange for a tour, please contact the undersigned.

Yours truly,

A handwritten signature in black ink, appearing to read "Michael J. Metzger", with a long horizontal line extending to the right.

Michael J. Metzger, P.E.

MJM:d
Enc.

CC. Tamara Stephen

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday June 14, 2011
6:30 p.m.

Chairman Arthur Henning called the meeting to order at 6:30 p.m.

Zoning Board of Appeals members present:

Chairman Arthur Henning
Ryan Mills
Robert Geiger

Vice-Chairman Daniel Michnik
David D'Amato
Patricia Burkard

Town Officials present:

Director of Community Development James Callahan
Town Attorney Steven Bengart
Councilman Bernard Kolber

Other interested parties present:

Noel Dill
Ken Pearl
Rick Smith
Paul Schulz
Sean Glenn
Lily Gorski
Joseph Reif
Greg Hartwig

Paul Stephen
Dan Singer
Tim Smith
Kevin Petho
Sam Yi
Jim Rzyruowski
Jim Schlabach

Old Business

Appeal No. 1

Stephen Development/Noel Dill
Residential Single Family

Requests the Board of Appeals approve and grant four (4) variances consisting of an 18.2' variance each to allow for the creation of four (4) building lots having 106.8' of public road frontage spanning between 4905 and 4915 Kraus Road.

Appeal No. 1 is in variance to § 229-50 (A).

DISCUSSION:

Chairman Henning explained that Mr. Dill, representing Stephen Development, was present at last month's ZBA Meeting and presented this request. At the time of that meeting, the Board decided to table the discussion, pending more information regarding the type of homes Stephen Development was planning to build on the property. Mr. Dill explained that there were no plans to blast the area for construction. The plan for the property is to build four, three bedroom, two-story homes with a two-car garage with varying square footages (between 1850 – 2400 sq. ft.) He presented possible floor plans to the

Board. His plan is to raise the southernmost lot, then build two homes (one modular and one stick build) to decide which type of construction is superior and decide which type will be used to build the other two homes. Mr. Dill feels as though these homes would be consistent with the style of other homes in the neighborhood. Each of these homes would have approximately 106' of road frontage, which, Mr. Dill pointed out, is larger than many of the lots surrounding them. Paul Stephen expressed that his desire is to build homes that are affordable but still makes sense in that area.

Mr. Geiger asked how much the homes will cost. Mr. Stephen said between \$260,000-\$299,000. He explained that constructing basements in a rocky area is difficult work and would result in a higher cost to build. He believes this will help that area of Kraus Road. He has no intention of selling the lots to a builder. The homes will be sold; there will be no rentals. Mr. Stephen said he plans to build two homes at once. One home will be modular and one home will be stick built. He will see which type of build makes more sense for the construction of the remaining two homes. He explained that the modular-type home would be delivered and then constructed on-site, and would follow all local Building codes.

Mr. Dill explained that there would be approximately 65' in between each home. He believes that the construction of these homes will benefit the neighbors by increasing their property value. The homes will be landscaped and attractive. They will also be energy efficient.

Mr. D'Amato thinks that constructing four homes in that area is too much. Mr. Stephen explained that there is a cost to take down the existing homes and for them to construct any fewer than four homes would be too financially straining. There is a lot of cost to demolishing the homes that are currently on the property, on top of the cost to build the new homes. To build fewer than four is not a possibility for them. Mr. Dill said these lots would be the largest on the block and would have more open space than the lots surrounding them.

Mr. Mills shared the concerns of Mr. D'Amato. He agreed that the lot size would match well with the immediately surrounding properties. But, if the entirety of Kraus Road is considered, as well as nearby streets, the lots in question would be significantly smaller by comparison. He asked if the applicants are representatives of Champion Homes. They are.

Mr. Michnik asked if Mr. Stephen intends to hold the mortgages on the homes. Mr. Stephen responded that he expects the homes to sell very quickly to conventional mortgage holders. He plans to build the first two homes and own them until they sell. He does not intend to hold the mortgages on the homes, and plans for the future occupants of the homes to secure their own financing.

Mr. Michnik asked if there had been any concrete interest from any potential buyers of these proposed homes. Mr. Stephen said that he has heard from many people who are looking to buy their own home, who want new, reliable and economical options. He believes that this project fits their needs.

Mr. Michnik asked the applicants if they knew of any hazardous materials used in the homes that are to be demolished. They don't know of any currently, but understand that in following the legal demolition process that they may find some to be in existence. They stated that they would then deal with these hazardous materials in the proper manner before demolition. It was asked if either of the homes proposed for demolition has historic importance. Mr. Dill does not believe them to be historic, but would be willing to go through the review process if necessary.

The applicants said they did have approval from both neighbors, and one of the neighbors even came to the last meeting to speak positively for the project. Mr. Stephen intends to build a fence at the adjoining property. The driveways will be blacktop.

There were concerns about drainage and water crossing over the street into other properties. The applicants stated that they fully intend to take care of any potential drainage issues, and follow all Town requirements when installing drainage. Mr. Dill believes that this project may actually improve the drainage in the area.

Mr. Michnik asked if Mr. Stephen had intention to ever rent these properties. To which Mr. Stephen responded that he does not intend them to be rentals. He does own rentals in other parts of Clarence, but that is certainly not his intention with this project.

Chairman Henning asked when the applicants intended to begin construction, should their variance be approved immediately. Mr. Stephen intends to demolish the home that is there and build the initial two homes within the next year. Mr. Dill pointed out that the rest of the process that they need to complete before proceeding would likely take a minimum of three months. It was asked what the applicants would do with the property if their variance was denied. Mr. Stephen responded that he would probably remodel one of the older homes that currently stands on the property and would turn it into a rental. He is unsure what he would do with the other home on the property, because it is in such disrepair.

Chairman Henning asked Mr. Stephen if he knew that the property was substandard lots when he bought it. Mr. Stephen said that he was not aware that he would run into a problem.

Mr. Michnik asked if the applicants would be comfortable with the Board placing a restriction on the square footage of the homes that will be built on the lots. Mr. Dill responded that he would be agreeable to a restriction on the initial build, but would like the future owners of the homes to not be restricted from adding any additional square footage to their home once purchased.

ACTION:

Motion by Daniel Michnik seconded by Arthur Henning, to **approve** Appeal No.1 under Old Business with the limitation that no home built would exceed 2250 square feet of living space. Also requiring that the two existing homes on the property be removed (the first home shall be removed within one year of this approval). Four (4) single-family homes are to be built on the property and will not be used as rental properties. Of the two homes built initially, one must be stick built and the other must be modular.

Chairman Arthur Henning	Aye	Vice-Chairman Daniel Michnik	Aye
Ryan Mills	Nay	David D'Amato	Nay
Robert Geiger	Aye		

MOTION CARRIED.

REQUEST FOR ACTION BY:

TOWN OF CLARENCE, N.Y.

- ☒ Appeal Board
☐ Planning Board
☐ Town Board

- ☒ Appeal
☐ Rezone
☐ Revise Ordinance
☐ Subdivision
☐ Limited Use Permit
☐ Other

Rec'd. by: _____

Date _____

Action Desired ITEM No. 1 - RELIEF FROM CONDITION APPLIED TO AREA
VARIANCE ON JUNE 14, 2011 RELATING TO 4905 AND 4915
KRAUS ROAD. SEE FURTHER EXPLANATION ATTACHED.

ITEM No. 2 - RELIEF FROM SECTION 229-32(0) REQUIRING 12.5'
MINIMUM SIDE YARD SETBACK - 0.59' RELIEF SOUGHT
ALLOWING AN 11.91' SIDE YARD SETBACK.

Reason ITEM No. 1 - AFTER VIEWING THE ON-SITE CONDITIONS RESULTING
IN THE CONDITION'S IMPOSITION ON THE VARIANCE, IT IS
EVIDENT THAT RECONSIDERATION OF THE CONDITION IS WARRANTED.

SEE FURTHER EXPLANATION ATTACHED.

PLEASE PRINT

ITEM No. 2 - STAKEOUT ERROR

Name STEPHEN DEVELOPMENT

SEE FURTHER EXPLANATION

Address C/O METZGER CIVIL ENG, PLLC

ON SIDE YARD SETBACK

8560 MAIN ST WILLIAMSVILLE NY 14221

ATTACHED.

Town/City WILLIAMSVILLE State NY Zip 14221

Signed _____

Requests for action on zoning should be filled out completely in above spaces if practicable, otherwise give brief description and refer to attached papers. The complete request with all necessary plans, maps, signatures, should be filed with the Secretary of the Planning Board. Requests (except appeals) may be filed with the Town Clerk or Town Board, but will generally be referred to Planning Board with subsequent loss of time.

Initial Action

Approved ☐ by _____ on _____ 20____

Rejected ☐ by _____ on _____ 20____

Approved ☐ by _____ on _____ 20____

Rejected ☐ by _____ on _____ 20____

Published (Attach Clipping) on _____ 20____

Hearing Held by _____ on _____ 20____

Final Action Taken

Approved ☐ by _____ on _____ 20____

Rejected ☐ by _____ on _____ 20____

Published (Attach Clipping) on _____ 20____

Filed with Town Clerk on _____ 20____

Filed with County Clerk on _____ 20____

**Justification for Relief From
Imposed Condition on Area Variance
Granted on June 14, 2011 and
Request for Area Variance on Side Yard Setback**

Action Desired – Item No. 1

In considering a requested area variance from section 229-50(A) of the zoning ordinance, the Zoning Board of Appeals applied a condition that of the first two homes to be built upon the four lots subdivided with lot frontage relieved to 106.8' versus 125' as required by the ordinance, one house would be built of modular construction with components manufactured in a controlled factory setting and one home would be "stick built" on site. This was done so a comparison would be made between the two processes to determine if the character of the modular home would be consistent with that of a stick built home. The first home, which is a modular home, is nearing completion and we hereby request to release the variance of the condition that the second home be "stick built."

Reason – Item No. 1

We feel release of the condition of the second home being stick built is warranted. Upon inspection of the modular home and comparison with existing stick built homes in the neighborhood, we feel the modular home is consistent with the character of the neighborhood and that construction of the second home is not needed to make this comparison.

Item No. 2

A contractor stakeout error occurred which resulted in the front or southwest corner of the home being set back at 11.91 feet from the south property line in lieu of the required 12.5'. The back or southeast corner is at 12.72' or slightly more than the required side yard setback of 12.5'.

In weighing the benefit to the applicant if the variance is granted against the detriment to the health, safety and welfare of the neighborhood or community by such grant, we ask that the board consider our responses to the following questions:

(1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

We offer that the building setback of 11.91' when compared to the code required 12.5' will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties as a 0.59' variation will be effectively unperceivable.

(2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

We offer that other methods to achieve the goal of compliance with the code would be to raise the house, remove the existing foundation, rebuild the foundation in compliance with the setback and move the house onto the new foundation; or demolish the south wall of the house including the roof system, demolish the south foundation wall, rebuild the south foundation wall, house wall and roof system, smaller than the present dimensions; all at substantial cost. This would be unfeasible and excessively costly.

(3) whether the requested area variance is substantial;

By either definition of substantial (actual size at 0.59') or by definition of substantial in that it would be relatively unperceivable, the requested area variance is not substantial.

(4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

By its relatively unperceivable magnitude, the requested area variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.

(5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

While the difficulty is clearly self-created, it was not intentional, and it was an honest mistake that was not advanced to serve any other purpose.

We feel that a review of the above five considerations will lead to a conclusion that the requested area variance should be granted.